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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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RICHARD D. FUERLE 1711 W. RIVER RD. GRAND ISLAND, NY 14072			EXAMINER FASTOVSKY, LEONID M	
			ART UNIT 3742	PAPER NUMBER
			MAIL DATE 06/14/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/709,070

Applicant(s)

HAMMAC, DAVID JACKIE

Examiner

Leonid M. Fastovsky

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claim 1 is objected to because of the following informalities: it cites "the chest flaps enclose the circumference of the abdomen" in paragraph A7, that contradicts what is disclosed in the specification ([0022]). Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-9 and 11-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nazerian in view of Bayron et al (5,785,716).

Nazerian discloses a device for heat treatment of a back portion of the patient (Fig. 5 and col. 4, lines 27-37) comprising a flexible material 2 that can be laid flat, the material having a central portion that covers the back of a person, at least one left flap 4 and at least one right flap 4, means 5 for holding the flaps together, an electric heating element 7 within the flexible material, and means 9 for connecting the heating element 7 to the source of electricity.

As for claims 2-7, 16 and 19, Nazerian discloses a first pair 4 of opposing flaps 4 attach over the chest (Fig. 5) and a second pair of opposing flaps 4 attach over abdomen-

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lower part of the body (Fig. 7) and capable of using them as one piece (col. 4, lines 37-46), the flaps are elastic flaps and attached by hook-and-loop fasteners 5. Further, Nazerian discloses that the same heating element may be used together with different attachments means for treatment of different body parts (col. 2, lines 30-40).

As for claim 9, Nazerian discloses a battery that must be 12 volts to heat the body of the patient (col. 3, lines 20-30).

As for claim 11, Nazerian discloses a temperature control unit 9 including a temperature sensor 10 to control the flow of electricity.

As for claim 12, the flexible material is made from plastic, thus inherently is waterproof (col. 3, lines 1-5).

As for claim 15 and 18, Nazerian discloses a source of electricity 9 external to the warming device (Fig. 1).

However, Nazerian does not disclose the length of the flaps and a patient lying supine. Bayron discloses a heating device, particularly for use for a person lying supine including flaps covering an entire body, specifically flaps 28, 30 for torso and abdomen and flaps 36, 38 for a chest (Fig. 1-4 and col. 3, lines 20-40).

It would have been obvious to one having ordinary skill in the art to modify Nazerian's invention to use his device for a patient lying supine as taught by Bayron in order to increase utilities of the heating device and make flaps designed to accommodate the body of the patient about 30 to 45 inches to accommodate the chest and about 30 to 60 inches to accommodate an abdomen in order to assure the proper heating of the patient, the abdomen flaps enclosing the chest flaps.

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As to claims 8, 14, 17 and 20 Nazerian does not disclose heating of the person's buttocks, head and neck and a method of heating. Bayron discloses a heating device of a person lying supine and heating buttocks, head and neck (Fig. 1-4). It would have been obvious to one having ordinary skill in the art to modify Nazerian's invention to include the buttocks, head and neck portions of the heating device as taught by Bayron in order to heat buttocks, head and neck of the patient when necessary, and also use a method of warming a patient because they disclose all structure elements of the invention and capable of so perform.

4. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nazerian in view of Bayron and further in view of Bickford.

Nazerian in view of Bayron discloses substantially the claimed invention including the source of electricity- a battery 17 that can be recharged, but does not disclose a converter. Bickford discloses a heating device for heating of a body part comprising electric heating elements 15-19 and a converter with a switch 32 converting from 110 volts AC to 12 volts DC. It would have been obvious to one having ordinary skill in the art to modify the invention of Nazerian in view of Bayron to include a converter as taught by Bickford in order to charge the battery- the power for the heating device when the battery is discharged.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Response to Arguments

6. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

As to claims 1-9 and 11-20, Nazerian discloses substantially the claimed invention, but does not disclose the length of the flaps and a patient lying supine, therefore the rejection under 102 has been withdrawn and replaced by a rejection 103 in view of Bayron.

As to claim 10 the rejection has not been changed and stands.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leonid M. Fastovsky whose telephone number is 571-272-4778. The examiner can normally be reached on M-Th. 8.00 am -6.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Leonid M Fastovsky
Examiner
Art Unit 3742

lmf


Tu Ba Hoang
Primary Examiner